UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

MACY'S EAST, INC.
Employer[1]

and

DISTRICT 6, INTERNATIONAL UNION
OF INDUSTRIAL, SERVICE, TRANSPORT
AND HEALTH EMPLOYEES
Petitioner

Case No. 29-RC-9482

and

RETAIL WORKERS AND DEPARTMENT
STORE UNION (RWDSU), U.F.C.W., AFL-CIO
Intervenor[2]

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Emily Cabrera, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

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1 The Employer's name appears as amended at the hearing.

2 RWDSU's status as an intervenor in this proceeding is based on a showing of interest.

Upon the entire record[3] in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Macy's East, Inc., herein called the Employer, is a New York[4] corporation with its principal place of business located at 1 Herald Square, New York, New York, and a facility located at 422 Fulton Street, Brooklyn, New York, herein called the Fulton Street facility, where it is engaged in the retail sale of goods, merchandise and other commodities. During the past year, which period represents its annual operations generally, the Employer derived gross revenues in excess of $500,000, and purchased and received, at its New York facilities, goods, supplies and materials valued in excess of $5,000 directly from suppliers located outside the State of New York.

Based on the foregoing and on the stipulation of the parties, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved herein claim to represent certain employees of the Employer.

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[3] References to the record will hereinafter be abbreviated as follows: "Tr. #" refers to transcript page numbers, "Bd. Ex. #" refers to Board exhibit numbers, and "Er. Ex. #" refers to Employer exhibit numbers.

It should be noted that, after the hearing closed, a represenative of the Petitioner sent letters to the Region purporting to present evidence which would undermine the credibility of the Employer's witness, William Acevedo. There is no indication that Petitioner sent copies to the other parties. I hereby reject the Petitioner's attempt to introduce evidence "off the record" and *ex parte*. To the extent that the letters could be interpreted as a motion to re-open the record, the motion is hereby denied. The proffered evidence (regarding the Employer's progressive disciplinary system) is irrelevant to the issues being litigated herein.

[4] Although the Employer's attorney stated on the record that the Employer is an Ohio corporation (Tr. 6), the parties' written stipulation stated that it is a New York corporation (Bd. Ex. 2).

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner herein, District 6, International Union of Industrial, Service, Transport and Health Employees, seeks to represent the following unit[5] of employees employed at the Employer's Fulton Street facility:

> All full-time and regular part-time sales employees and sales support employees, including sales associates, sales specialists, fragrance sales associates, cosmetic sales associates, cosmetic rotator/coordinators, Flying Squad employees, customer service/gift wrap employees, bridal registry employees, Macy's By Appointment employees/personal shoppers, visual/display employees, alterations employees, freight elevator operators, stock/merchandiser/processing employees, START Team employees, plants clericals, contingent/per diem/on call employees, telephone operators, photo studio employees, media retrieval employees, cash control employees, expense payable employees, assistant sales managers, customer service managers, cosmetic counter managers, cosmetic business managers and stock lead persons, but excluding all office clerical employees, Macy's By Mail employees, housekeepers, passenger elevator operators, craft maintenance employees, guards and supervisors as defined in the Act.

There are two areas of dispute regarding the bargaining unit. First, the Petitioner claims that fitting room checkers are guards as defined in the Act, and must therefore be excluded from the unit under Section 9(b)(3) of the Act. The Employer disagrees. Second, there is a dispute regarding employees who are hired during the busy winter-holiday season, herein referred to as "holiday employees." The Petitioner asserts that the holiday employees are temporary or casual employees who must be excluded from the unit, whereas the Employer claims they are regular seasonal employees who have a

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5 The petitioned-for unit appears as amended at the hearing.

reasonable expectation of future employment and who must be included in the unit. The Intervenor took no position on those issues.

In support of its position on the unit issues, the Employer called the Fulton Street store manager, William Acevedo, to testify. No one else was called to testify by any party. Thus, the following recitation of facts is based on Acevedo's testimony, as well as the documentary evidence.

Fitting room checkers

The Employer employs approximately 21 fitting room checkers. As the job title indicates, they work primarily in the rooms where customers try on clothing. The Employer allows customers to bring no more than six garments into a fitting room at a time, or no more than eight "pieces" if two-piece garments such as suits are included. The fitting room checkers' specific duties include counting the number of garments that each customer brings to the fitting-room area. The checker gives the customer a plastic "garment control tag" indicating the number of pieces going into the fitting room. If the customer has more than six garments (or eight pieces), the checker must explain the Employer's policy regarding the maximum number of garments, and offer to hold the excess number of garments aside while the customer tries on the first six. When the customer is ready to leave the fitting-room area, the checker must verify that the customer has the same number of garments/pieces coming out as the garment control tag indicates.

If there is a discrepancy in the number, the checkers are instructed to ask the customer politely (without accusation) whether the customer left any pieces behind in the fitting room. If the customer does not offer to retrieve the missing number of items

from the fitting room, or the checker does not find the remaining items there, the checkers are not authorized to detain or search the customer. Rather, the checkers are instructed to immediately call the Employer's security department to report a possible theft, and to record their observations in the fitting room "control log." Likewise, if the checkers see any other evidence of theft (e.g., customers attempting to conceal merchandise under their jacket or in their bag), they must contact the security department and record it in the log.

The checkers' duties also include periodically checking the fitting rooms to keep them clear of merchandise, empty hangers, tags and labels. If they find evidence of possible theft, such as a "sensormatic" security tag[6] or price tag which a shoplifter may have removed from a garment, the checkers must make a note of it. In order to "audit" checkers, the Employer occasionally plants a sensormatic tag or price tag in a fitting room to test how long it takes the checker to find it.

As the above description indicates, the checkers' duties are primarily intended to reduce the opportunity for shoplifting. Acevedo testified that the checkers' duties also include such "sales support" duties as placing garments back on the hangers properly (including belting them, buttoning them, etc.), and giving customers recommendations regarding items that coordinate with the garments they chose. However, if a customer asks the checker to retrieve an item from the sales floor (e.g., the same garment in a different size), the checker, who cannot leave the fitting-room unattended, must decline. Acevedo also claimed that checkers can ring up sales for customers, although the

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6 Under the "sensormatic" security system, special tags are attached to merchandise. If the tag has not been removed by a sales employees before the merchandise is taken out the exit door, an alarm will sound. Sales employees are generally responsible for attaching and detaching the sensormatic tags. The

testimony seems to contradict written instructions to checkers not to leave the fitting rooms unattended (Er. Ex. 1, p. 3 and 4). He conceded that checkers spend less than 10% of their time outside the fitting room area.

Fitting room checkers are not armed. They do not have authority to detain or arrest customers. They do not monitor surveillance cameras. They do not wear the same red jacket worn by the Employer's security guards, nor any sort of security badge. Rather, they follow the same dress code as sales associates, and wear a similar name tag.

At the beginning of their shift, fitting room checkers pick up a key to their fitting room area, a certain number of garment control tags, and a fitting room control log. The record does not indicate where they pick up these items (i.e., from the security department, from sales managers or elsewhere). They must return these items at the end of their shift, noting the number of garment control tags. If any garment control tags are missing, they must notify the sales manager.

Acevedo testified that sales associates can "fill in" during a fitting room checker's absence, by letting customers into fitting rooms with a key. It is not clear from the record whether sales associates in that circumstance must follow the same procedure for obtaining and using garment control tags and a log. Acevedo did not state how often sales associates fill in for fitting room checkers. However, he testified that the Employer's checkers and security guards never fill in for each other.

Acevedo testified that newly-hired fitting room checkers receive training from both the security department and sales managers. Sales associates also undergo training in security measures, as part of the Employer's overall "loss prevention process." Sales

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fitting room checkers do not handle the tags, although they are supposed to look for any detached tags

associates must also report suspected theft to the security department, although they do not keep written logs. Sales employees in the fine jewelry department enforce a maximum number of jewelry pieces that can be brought out from the locked case at the same time. All employees are eligible to receive a monetary award if they give the Employer's security department information which results in the apprehension of a shoplifter or dishonest employee.

Fitting room checkers' hours are scheduled by the security department. The security department must schedule the checkers' lunch times and breaks so that the fitting rooms are always covered. Acevedo testified somewhat vaguely that the checkers are "supervised" and "directed" by sales managers, and that sales managers "participate" in the checkers' evaluations. In response to questioning by the hearing officer, Acevedo explained that fitting room checkers may be disciplined by either the security department (e.g., for failing to find a "planted" tag in a fitting room) or by the sales manager (e.g., for returning late from a lunch break).

Acevedo testified that fitting room checkers, sales associates and security guards all have "comparable" wages, starting at $6.50 per hour, and that they have the same benefits.

Discussion

Section 9(b)(3) of the Act defines a guard as "any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." Section 9(b)(3) also prohibits the Board from finding appropriate any bargaining unit that

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which shoplifters may have left in the fitting rooms.

includes both guards and non-guard employees. Thus, if the fitting room checkers in the instant case are guards, as the Petitioner claims, they cannot be included in the same unit with the sales employees and other non-guards.

In prior cases, the Board has found department-store fitting room checkers to be guards, inasmuch as they enforce rules designed to protect the employer's property. For example, in Allied Stores of New York, Inc., d/b/a/ Stern's, Paramus, 150 NLRB 799, 807 fn.48 (1965), the fitting room checkers who used tags to indicate the number of garments, who verified that the customer took out the same number of garments and who notified the security department in case of discrepancy, were found to be guards. *See also* Lord & Taylor, a Division of Associated Dry Goods Corp., 150 NLRB 812, 817 fn.14 (1965). A decade later, in Broadway Hale Stores, Inc., d/b/a The Broadway, 215 NLRB 46 (1974), fitting room checkers were again found to be guards because of their role in protecting the employer's property. In Broadway, as here, the checkers enforced a maximum number of garments that customers were allowed to take in a fitting room at one time. The Broadway checkers protected the employer's property from theft by using a nearly identical system of counting the number of garments, issuing a tag to identify the number, verifying the number of garments coming out of the fitting room, holding any excess garments for the customer to try later, and reporting any problems or suspicions to security or the store management. The Broadway checkers' ability to leave the fitting area was likewise limited. The Board, citing Stern's, Paramus, supra, found the Broadway checkers to be guards. It should be noted that although the guards in Broadway did not arrest suspected shoplifters, they were found to "enforce"

security rules simply by preventing customers from bringing more than the allowable number of garments into the fitting room.

In more recent years, the Board has found many categories of employees not to be guards even though, arguably, they help protect an employer's property from trespass or theft. *See, e.g.,* Purolator Courier Corp., 300 NLRB 812 (1990)(couriers); BPS Guard Services, Inc., d/b/a Burns International Security Services, 300 NLRB 298 (1990)(firefighters); Tac/Temps and the Philadelphia Coca-Cola Bottling Co., 314 NLRB 1142 (1994)(delivery truck checkers); 55 Liberty Owners Corp., 318 NLRB 308 (1995)(doorpersons in residential building); Wolverine Dispatch, 321 NLRB 796 (1996)(receptionists); and Boeing Co., 328 NLRB No. 25 (1999)(firefighters). In part, this is because the Board has been reluctant to expand the definition of guards beyond Congress's original concern regarding guards who might be called upon to protect an employer's plant during a strike. Burns, supra, 300 NLRB at 299-301. Fitting room checkers do not perform many of the security or police-type functions normally associated with guards, and it appears unlikely that this Employer would use the checkers to augment its patrols in the event of a strike at the store. Nevertheless, the Board has not decided the question of whether fitting room checkers are guards in the quarter century since Broadway, and Broadway continues to be cited as good law. For example, in Tac/Temps, supra, fitting room checkers' "enforcement" of the garment-number maximum was distinguished from the delivery-truck checkers' mere inspection of the amount of merchandise on trucks before and after deliveries. Tac/Temps, supra, 314 NLRB at n. 5.

Accordingly, based on such cases as Stern's, Paramus and Broadway, supra, which have not been reversed by the Board, I find the Employer's fitting room checkers to be guards, and shall exclude them from the unit.

Holiday employees

Acevedo testified that the Employer's stores are busiest during the weeks leading up to Christmas. At that time of year, the Employer always needs to hire additional employees, known as "holiday associates," to handle the additional business. In 1999, for example, between mid-October and mid-December, the Employer hired a total of 283 employees for the Fulton Street store. For the sake of comparison, although the number of "base" or year-round employees does not appear on the record, I note that the Petitioner estimated the number at 500 employees when it filed its petition (Bd. Ex. 1) in May 2000, i.e., during the regular, non-holiday season. Thus, an increase of more than 283 employees would appear to be a fairly significant increase in the Employer's workforce during the winter holidays.

As described in more detail below, the holiday employees are generally expected to work until early or mid January. The Employer then lays off most of the holiday employees at that time, although it retains some as new, permanent employees.

Acevedo explained that, in fact, *all* employees hired between certain cutoff dates are considered to be holiday employees. Specifically, for the last season, any employees hired between Monday, October 11, and Monday, December 13, 1999, were considered holiday employees. Acevedo explained that the Employer tells those employees that it would like them to stay at least through New Year's Day, and possibly through the

general inventory in mid-January. However, between those holiday-hiring dates, the Employer does not commit to hiring any base employees on a permanent basis.

The Employer maintains a list of names and addresses of former employees, which it uses to recruit holiday employment applicants. (It is not clear from the record whether this list includes only former holiday employees, or all individuals who worked for the Employer in the recent past.) During the first week of October, the Employer mails a postcard to people on the list, inviting them to apply for "seasonal opportunities" (Er. Ex. 5). Acevedo explained that the Employer gives this group of applicants priority, in terms of selecting their schedule and the department in which they want to work. During the 1999 season, 21 of the 283 holiday employees hired between October 11 and December 13 were "returnees" from prior holiday seasons.

In late October, the Employer then starts to run general advertisements to recruit additional holiday employees. Acevedo stated that these advertisements run in "print media, typically newspapers," although he did not specify the publications. Most holiday employees come from the Brooklyn area.

In mid-December, the Employer gives holiday employees a questionnaire (Er. Ex. 4), which they can use to indicate any interest in post-holiday, permanent employment. Acevedo stated that there are usually more holiday employees interested in remaining than the number of slots available. As a result, the Employer must evaluate the holiday employees to select the best candidates for permanent employment. Of the 283 holiday employees hired during the 1999 holiday season, 66 became permanent employees in January 2000. The other 217 were laid off or terminated at that time. When holiday employees join the Employer's base staff in January, they start the usual

90-day probationary period for new employees at that time. However, they do not have to fill out new applications or undergo new-employee training again.

Holiday employees generally start at a wage rate of $6.00 per hour, which is lower than permanent employees' starting rate of $6.50 per hour. Some holiday employees, such as those who worked in prior seasons, may be paid $6.50 per hour. Thus, the holiday employees' rate ranges between $6.00 and $6.50 per hour, whereas the permanent employees' rate ranges from $6.50 to $14 per hour. (Holiday employees who later become permanent employees receive some kind of wage increase at that time.) Holiday employees are entitled to an employee discount if they want to buy the Employer's merchandise. However, they do not receive other benefits that permanent employees receive, such as paid holidays, paid vacation time, and eligibility for life insurance, health insurance and a profit-sharing program.

The Employer did not provide figures for previous holiday seasons (1998, 1997 or earlier).

Discussion

In deciding whether to include seasonal employees in a bargaining unit, the Board assesses their expectation of future employment, based on the size of the area labor force, the stability of the employer's labor requirements and the extent to which it is dependent on seasonal labor, the actual re-employment season-to-season of the worker complement, and the employer's recall or preference policy regarding seasonal employees. Maine Apple Growers, Inc., 254 NLRB 501, 502 (1981). Employees who have a reasonable expectation of future employment with the employer are found to "regular" seasonal employees, and are included in the unit. By contrast, those who have

no reasonable expectation of future employment are found to be "temporary" or "casual" seasonal employees, and are excluded from the unit. A related issue concerns the *timing* of an election in a seasonal industry. Where regular seasonal employees are found eligible to vote, the election must be held at or near the seasonal peak. Kelly Brothers Nurseries, Inc., 140 NLRB 82, 86-7 (1962).

In the instant case, the Employer's recurring dependence on seasonal labor cannot be disputed. The record clearly indicates that, every year, the Employer needs to hire a substantial number of additional employees to help handle the pre-Christmas shopping rush. The record also clearly indicates that the Employer keeps a list of holiday employees from previous years in order to contact them for re-employment, and that it grants preference to hiring those employees in early October, before its begins general advertising for job applicants at the end of October. Those factors weigh in favor of finding the holiday employees to be regular seasonals. The record also indicates that holiday employees perform the same duties as permanent employees, in the same job classifications, and are supervised by the same supervisors.

On the other hand, the record does not demonstrate a pattern of the Employer actually hiring the same seasonal employees year after year. The record indicates that only 21 of the 283 holiday employees hired during the late 1999 season had worked in previous seasons. (The Employer did not provide figures for earlier years.) That small portion of "returnees" -- only 7.4% -- appears to fall within the range of employees whom the Board has found *not* to have a reasonable expectation of future employment. *See* Freeman Loader Corp., 127 NLRB 514 (1960)(only 10 out of 35 seasonal employees, or 29%, were returnees); Post Houses, Inc., 161 NLRB 1159, 1171-3 (1966)(3 of the 40

seasonals and student-seasonals, or 7.5%, returned); and Seneca Foods Corp., 248 NLRB 1119 (1980)(3 out of 72, or 4.2%). By contrast, this 7.4% portion of returnees is much smaller than the portion in cases where employees were found to be "regular" seasonal employees with a reasonable expectation of future employment. *Compare* Kelly Brothers, supra, 140 NLRB at 85 (29 out of 75 returnees, or 39%); Tol-Pac, Inc., 128 NLRB 1439 (1960)(at least 50% worked in previous year); Baumer Foods, Inc., 190 NLRB 690 (1971)(69% returnees in 1969, and 54% in 1970). In short, *despite* the hiring preference which this Employer gives to returning holiday employees, the Employer does not actually re-hire many of the same holiday employees from year to year. An employer's policy of contacting former seasonal employees and its willingness to hire them again do not necessarily prove regular seasonal status, without evidence that specific seasonal employees have actually returned to work in sufficient numbers to prove a reasonable expectation of return. F.W. Woolworth Co., 119 NLRB 480, 484 (1957)(employer asked seasonals to return, but no evidence of returns); Freeman Loader Corp., supra, 127 NLRB at 515 (employer willing to rehire, but only 10 in 35 returned).

Furthermore, the employees whom the Employer hires between October and December are given a fairly finite employment term, until early to mid January.[7] Although some eventually become permanent employees, the Employer makes no commitment during the hiring process to convert holiday employees to permanent employees. In fact, the vast majority of holiday employees (217 out of 283, or 77%, in early 2000) are actually laid off in January. Under these circumstances, holiday

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7 The fact that it is not an exact calendar date is unimportant. Caribbean Communications Corp., d/b/a St. Thomas-St. John Cable TV, 309 NLRB 712, 713 (1992).

employees would doubtless understand that those jobs are meant to be temporary, and that their chance of permanent employment is small. The mere fact that *some* holiday employees may be converted to permanent status does not give all holiday employees, as a group, a reasonable expectation of future employment. In Seneca Foods Corp., supra, the mere fact that employees were told of a "chance" of being retained at the end of the season, or recalled again from layoff, did not give them a reasonable expectation of regular employment, especially where their actual chances were found to be "less than impressive" (only 3 out 72 were rehired). Id., 248 NLRB at 1120.

As noted above, the Board also considers the size of the area labor force when considering seasonal employees' chance of future employment. Obviously, an employer who repeatedly draws from the same, relatively small labor pool (for example, employees with unusual skills, or those in a sparsely populated area) to find seasonal employees is more likely to hire the same individuals again in future seasons. By contrast, seasonal employees drawn from a large or amorphous labor pool are less likely to be hired again. In United Telecontrol Electronics, Inc. et al., 239 NLRB 1057 (1978), for example, the employer hired new employees each year from the New Jersey unemployment rolls. In concluding that the seasonal employees did not have a reasonable expectation of re-employment, the Board found that "a statewide group of unemployed people is so vast and everchanging as to preclude it from being classified as an identifiable labor market area from which the Employer draws the same labor force." Id. at 1058, fn.3 (internal quotation marks omitted). The record in the instant case indicates only that the Employer hires people from the Brooklyn area. Although there is no specific evidence on the record regarding the labor market, I note that the population of Brooklyn alone is close to

3 million people. Further, the areas in which the Employer's employment advertisements presumably appear and from which it seeks to draw applicants (including Queens and other areas) are far in excess of Brooklyn's 3 million residents. Given the vastness of this group, it is doubtful that the Employer is drawing from the same labor "pool" season after season. This factor, therefore, weighs against the likelihood of seasonal employees' future re-employment with the Employer.

Finally, it should be noted that the holiday employees generally earn a lower wage than the regular, permanent employees, and do not share the same benefits.

Based on the foregoing, I conclude that the holiday associates hired by Macy's East during the pre-Christmas shopping season are essentially temporary employees who have no reasonable expectation of future employment. Even though the Employer contacts employees from prior seasons, and grants them preference for hiring, the record indicates that very small numbers of holiday employees actually return for re-employment. In addition, the holiday employees are hired with the understanding that their employment will last for a finite period (until early to mid-January), and most of them are indeed laid off in January. Furthermore, the terms of their employment are significantly different from those of regular, year-round employees. On balance, the holiday employees appear more akin to temporary employees than the "regular" seasonal employees in such cases as Kelly Bros. and Baumer Foods, supra. *See also* F.W. Woolworth Co., supra (Christmas and Easter extras excluded as "casual"); Root Dry Goods Co., 126 NLRB 953, 955 fn.10 (1960)(same). The evidence provided by the Employer regarding the 1999-2000 season does not sufficiently demonstrate an expectation of future employment so as to justify the holiday employees' inclusion in the

unit. Finally, I note that, inasmuch as holiday employees are excluded from the unit as temporary, there is no need to postpone the election herein until the peak holiday season.

Accordingly, I hereby find that the following employees, excluding both the fitting room checkers and temporary holiday associates, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time sales employees and sales support employees, including sales associates, sales specialists, fragrance sales associates, cosmetic sales associates, cosmetic rotator/coordinators, Flying Squad employees, customer service/gift wrap employees, bridal registry employees, Macy's By Appointment employees/personal shoppers, visual/display employees, alterations employees, freight elevator operators, stock/merchandiser/processing employees, START Team employees, plants clericals, contingent/per diem/on call employees, telephone operators, photo studio employees, media retrieval employees, cash control employees, expense payable employees, assistant sales managers, customer service managers, cosmetic counter managers, cosmetic business managers and stock lead persons employed at the Employer's facility at 422 Fulton Street, Brooklyn, New York, but excluding all office clerical employees, Macy's By Mail employees, housekeepers, passenger elevator operators, craft maintenance employees, temporary employees such as holiday associates, fitting room checkers, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate, at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States who are employed in the units may vote if they appear in person or at the polls. Ineligible to

vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by District 6, International Union of Industrial, service, Transport and Health Employees, or by the Retail Workers and Department Store Union (RWDSU), U.F.C.W., AFL-CIO, or by neither labor organization.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, four (4) copies of an election eligibility list, one for each unit, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the lists available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such lists must be received in the Regional Office, One MetroTech Center North-10th Floor (corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201, on or before July 5, 2000. No extension of time to file the lists may be granted, nor shall the filing of a request for review operate to stay the filing of such lists except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by July 11, 2000.

Dated at Brooklyn, New York, this 27th day of June, 2000.

/S/ ALVIN BLYER

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
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440-1760-5300 et seq.

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